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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
SUBJECT TO COURT APPROVAL:
Hearing Date: Friday, June 1, 2018
Hearing Time: 9:30 a.m.
Response Date: Thursday, May 31, 2018
(12:00 pm PDT)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

NORTHWEST TERRITORIAL MINT,
LLC,

Debtor.

Case No. 16-11767-CMA

MOTION FOR ORDER AUTHORIZING THE
SALE BY AUCTION OF MISCELLANEOUS
PROPERTY OF THE ESTATE FREE AND CLEAR
OF ALL LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES

I. INTRODUCTION

Mark Calvert (the “Trustee”), Chapter 11 Trustee for Northwest Territorial Mint, LLC (“NWTM” or the “Debtor”), submits this Motion requesting approval of the sale by auction of certain miscellaneous items of property located in Dayton, Nevada, and Green Bay, Wisconsin, including but not limited to two vehicles, a gun safe, refrigerators, telescope, metal detector, WWII camera, microwaves, a television, retail merchandise furniture, shredders, pallets of plating tubes and control boxes (the “Miscellaneous Property”).¹ The Miscellaneous Property does not include any coining dies or related custom-minting items. Previously, the Trustee sold substantially all of the Debtor’s equipment, which is primarily located in Dayton, Nevada, to Industrial Assets Corp. Industrial Assets Corp. now intends to auction the equipment for sale in Nevada on June 6, 2018.

¹ The complete list of Miscellaneous Property is contained in Exhibit A to the Declaration of Mark Calvert filed in support of this Motion.

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DEBTOR’S ASSETS AT AUCTION - 1

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1 Industrial Assets has agreed to include the Miscellaneous Property in its auction and liquidate it on
2 behalf of the estate on the terms described herein. The disposal by Industrial Assets will result in the
3 efficient disposition of a small number of remaining items of property before the estate needs to
4 vacate the Dayton facility.

5 The Motion is supported by the Declaration of Mark Calvert filed concurrently herewith.
6 In support of this Motion, the Trustee respectfully represents as follows:

7 II. BACKGROUND

8 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under
9 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark
10 Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

11 The Trustee's goal in this case has been to maximize the recovery of creditors. Since May
12 2017, the Trustee has engaged in marketing efforts related to a potential sale of the business. The
13 Trustee entertained expressions of interest from multiple parties including offers to purchase the
14 assets of the estate on a going concern basis and for substantially all of the assets of the estate, but no
15 concrete offer materialized for such a sale on terms which provided any meaningful return to the
16 estate. Because no concrete offer materialized, and because of the inadequate cash resources
17 available to the Trustee, the Trustee closed the custom minting business on December 29, 2017 and
18 prepared to liquidate the assets of the estate via auction.

19 While the Trustee prepared to sell the Debtor's assets at auction, he engaged in negotiations
20 with multiple buyers for various aspects of the Debtor's assets. Ultimately, the Trustee separately
21 reached agreements with Industrial Assets Corp. ("Industrial Assets") and Medalcraft Mint, Inc.
22 ("Medalcraft") for the purchase and sale of certain assets of the Debtor. On March 14, 2018, the
23 Court approved the Trustee's sale of substantially all of its equipment and machinery to Industrial
24 Assets Corp. for \$1.95 million. *See* Dkt. No. 1531.

25 Industrial Assets has not yet removed the equipment from the Debtor's Dayton facility. The
26 Debtor's Dayton, Nevada facility therefore houses property of the Debtor acquired by Industrial

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1 Assets as well as the Miscellaneous Property. According to the Court's *Order Granting in Part and*
2 *Denying in Part Motion for Relief from the Automatic Stay and Related Relief* ("Relief From Stay
3 Order") (Dkt. No. 1450), the automatic stay is modified to allow Bob and Connie Hoff (the "Hoffs")
4 to commence proceedings under Nevada law to take possession of the Dayton Premises on or after
5 June 30, 2018, if the Trustee has not vacated the Premises by that date. The Trustee and the Hoffs
6 have recently reached an agreement in principal to extend that date to July 31, 2018 and the Court
7 has approved that extension. Nevertheless, the Trustee needs to vacate the Dayton premises in short
8 order.

9 Industrial Assets has planned to auction the property it acquired from the estate on June 6,
10 2018. Industrial Assets has agreed to include the Miscellaneous Property, which is more particularly
11 described in the Trustee's declaration filed in support of this Motion. Industrial Assets has agreed to
12 auction the Miscellaneous Property in exchange for an 18% buyer's premium on the assets sold at
13 auction. The Trustee believes it is in the best interests of the estate to authorize the sale of the
14 Miscellaneous Property in the Industrial Assets auction. The Miscellaneous Property is not of
15 significant value relative to the other assets of the estate. The Trustee believes it makes economic
16 sense for Industrial Assets, who has already scheduled an auction, to auction the Miscellaneous
17 Property. Doing so will avoid the time associated with the Trustee engaging a separate auctioneer
18 and scheduling a separate auction.

19 The only party, of which the Trustee is aware, that may assert an interest in the
20 Miscellaneous Property is the Hoffs. By virtue of the Relief from Stay Order, the Hoffs have a post-
21 petition lien on all assets of the bankruptcy estate to secure any administrative claim they may be
22 allowed under Section 507(a)(2) of the Bankruptcy Code that arises from the Trustee's use of the
23 Dayton premises prior to the time the Trustee vacates. Additionally, the Hoffs hold an alleged-
24 prepetition security interest in the estate's assets that is subject to bona fide dispute for the reasons
25 articulated by the Trustee in prior pleadings. *See, e.g.*, Dkt. No. 1556. A copy of the security
26 agreement of the Hoffs is attached to the Declaration of Connie Hoff at Dkt. No. 1330, Ex. D. As

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1 described below, the Hoffs' asserted liens do not provide an impediment to the Trustee's ability to
2 sell the Miscellaneous Property at auction.

3 **III. EVIDENCE RELIED UPON**

4 This Motion relies on the arguments set forth herein, the Declaration of Trustee Mark Calvert
5 filed in support of the Motion, the pleadings and records on file in this case, and the arguments of
6 counsel, if any.

7 **IV. ARGUMENT**

8 The Court should authorize the Trustee to sell, at an auction conducted by Industrial Assets,
9 the Miscellaneous Property free and clear of liens, claims, interests, and encumbrances. The Court
10 should further authorize the sale according to the compensation terms agreed by the Trustee and
11 Industrial Assets. In particular, the Trustee asks that Industrial Assets be authorized to charge a
12 buyer's premium of 18% on the Miscellaneous Property it sells at auction.

13 Section 363(b) of the Bankruptcy Code provides that the Trustee is authorized to sell assets
14 outside the ordinary course of its business. While the text of the Bankruptcy Code does not provide
15 the standard for determining when it is appropriate for a court to authorize the sale of property of
16 the estate, courts often approve a proposed sale if such sale is based upon the sound business
17 judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 9 F.3d 389, 395 (3d Cir. 1996); *In*
18 *re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). Here, the Trustee's desire to sell the Debtor's
19 Miscellaneous Property at auction is based on his sound business judgment and is in the best
20 interests of the estate.

21 Here, a sound business reason exists for the proposed sale. Namely, the objective of the
22 Trustee's proposed sale is to maximize the proceeds of such sale for the benefit of the bankruptcy
23 estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d
24 558, 564-65 (8th Cir. 1997) (stating that in bankruptcy sales, "a primary objective of the Code [is] to
25 enhance the value of the estate at hand"); *In re Integrated Res, Inc.*, 147 B.R. 650, 659 (S.D.N.Y.
26 1992) ("It is a well-established principle of bankruptcy law that the objective of bankruptcy rules

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1 and the [Debtor's] duty with respect to such sales is to obtain the highest price or greatest overall
2 benefit possible for the estate.”) (alteration in original) (quoting *In re Atlanta Packaging Products,*
3 *Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

4 An immediate sale by auction of the Debtor's Miscellaneous Property is necessary. There are
5 only a few remaining physical assets that the Trustee needs to liquidate for the benefit of the estate.
6 Allowing Industrial Assets to sell the Miscellaneous Property on the estate's behalf will avoid the
7 expense of engaging a separate auctioneer who would otherwise need to schedule and conduct a
8 separate auction for the relatively few items included in the Miscellaneous Property. Furthermore,
9 the Miscellaneous Property must be liquidated before the end of July, at which time the Hoffs will be
10 permitted to proceed with an unlawful detainer action.

11 The sale of assets outside of the ordinary course of business may be conducted by public
12 sale, or a private sale, under the appropriate circumstances. Here, the Trustee has determined, as is
13 within his discretion, that it is preferable to hold a public auction for the property. *See In re Bakalis*,
14 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act,
15 the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample
16 discretion . . . to conduct public or private sales of estate property.”) (internal quotations and citation
17 omitted).

18 It is most efficient to conduct an auction of the Miscellaneous Property. The Miscellaneous
19 Property does not include custom-minting dies and is of little interest to the customers or buyers of
20 the Debtor's other assets that are specific to its former operations. It would be difficult and time
21 intensive for the Trustee to market each individual item included in the Miscellaneous Property for
22 sale to specific buyers. To the extent the Trustee is presented with more beneficial offers to purchase
23 the substantially all of the assets prior to the auction, the Trustee reserves the right to retract assets
24 from the auction and present such purchase offers to the Court for approval.

25 **A. Good Cause Exists to Waive the Stay Under Fed. R. Bankr. P. 6004(h)**

26 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of
property other than cash collateral is stayed for 14 days, unless the court orders otherwise. As noted

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1 herein, the auction will take place on June 6, 2018. If the Court hears this Motion on June 1, 2018,
2 there will be fewer than 14 days between the date that an order is entered and the date that the
3 auction is held. As such, waiver of the stay pursuant to FRBP 6004(h) is essential.

4 **B. The Proposed Sale Satisfies the Requirements of 11 U.S.C. § 363(f)**

5 The Trustee requests that the sale by auction be free and clear of liens, interests, and
6 encumbrances. Pursuant to 11 U.S.C. § 363(f), a Trustee may sell property of the estate under
7 11 U.S.C. § 363(b) free and clear of any interest in such property of any entity other than the estate
8 only if (1) applicable non-bankruptcy law permits sale of such property free and clear of such
9 interest; (2) such entity consents; (3) such interest is a lien and the price at which the property is to
10 be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona
11 fide dispute; *or* (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
12 money satisfaction of such interest. 11 U.S.C. § 363(f) (emphasis added). Here, there are multiple
13 bases upon which the Court should authorize the Trustee to sell the Debtor's assets "free and clear"
14 at auction.

15 The sale free and clear is permissible under 11 U.S.C. § 363(f)(5) because there are legal and
16 equitable proceedings in which a lienholder could be compelled to accept a money satisfaction of
17 such lien, including the disposition of collateral under the default remedies provided in
18 Washington's Uniform Commercial Code (Chapter 62A.9A RCW) or in a receivership proceeding
19 pursuant to RCW 7.60.260.

20 In addition, the Motion satisfies the requirements of 11 U.S.C. § 363(f) because the alleged
21 prepetition lien interest in the property (asserted by the Hoffs) are subject to a bona fide dispute by
22 the Trustee and because any lienholder will be adequately protected by having its liens, if any, attach
23 to the proceeds of the sale in the same order of priority, with the same validity, force, and effect that
24 such creditor had prior to such sale, subject to any claims and defenses that the Trustee and the
25 Debtor's bankruptcy estate may possess with respect thereto. For these reasons, the proposed sale
26 free and clear of liens should be approved.

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1
2 **V. CONCLUSION**

3 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order in
4 the form proposed by the Trustee approving the liquidation of the Miscellaneous Property at the
5 Industrial Assets auction, free and clear of liens, claims, interests, and encumbrances. The Trustee
6 further requests that Industrial Assets' be authorized to charge an 18% buyer's premium in
7 connection with the sale of the Miscellaneous Property at auction.

8 DATED this 25th day of May, 2018.

9
10 K&L GATES LLP

11 By /s/ Michael J. Gearin
12 Michael J. Gearin, WSBA #20982
13 David C. Neu, WSBA #33143
14 Brian T. Peterson, WSBA #42088
15 Attorneys for Mark Calvert, Chapter 11 Trustee
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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on May 25, 2018, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on May 25, 2018, she caused the foregoing document to be deposited in the U.S. mail to the Party at the address listed below:

Northwest Territorial Mint LLC
c/o Ross Hansen, Member
P.O. Box 2148
Auburn, WA 98071-2148

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 25th day of May, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz